

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	3:06-cr-00120-LRH-VPC
)	
vs.)	<u>ORDER</u>
)	
DELDAR MASIH,)	
)	
Defendant.)	
_____)	

Presently before the court is Defendant Masih's Memorandum Regarding Admissibility of Defendant's Statements (#22), which is essentially a motion in limine seeking a determination that certain statements made by Defendant to Steven P. Brazelton will be admissible at trial. The United States has filed an opposition and the court has held a hearing at which Mr. Brazelton's prospective testimony was presented to the court.

Mr. Brazelton testified concerning comments made to him by Defendant Masih, which likely occurred shortly after Defendant Masih entered a guilty plea on a criminal charge before the Honorable Edward C. Reed, Jr. Defendant Masih's statements under oath made in the course of Judge Reed's canvass of him are related to the pending charge and prospective trial in this action. The comments attributed to the Defendant by Mr. Brazelton are inconsistent with the statements under oath made to the canvassing court.

The case law in support of the admissibility and nonadmissibility of such statements is generally at odds. However, the court is influenced by the fact that the statements assertedly made to Mr. Brazelton are not being offered for the truth of the matter asserted as opposed to

1 being offered for purposes of showing the Defendant's state of mind. Given the timing of the
2 statements and the circumstances under which they were made, the court rules they are
3 sufficiently relevant to Defendant Masih's defense that they are not excluded by the hearsay rule
4 and would be admissible at trial.

5 If the defense does intend to offer the testimony of Mr. Brazelton, the court will consider
6 a cautionary instruction if one is requested by the government. Any proposed limiting instruction
7 should be served on the defense and provided to the court prior to trial.

8 IT IS SO ORDERED.

9 DATED this 1st day of June, 2007.



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12 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE
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